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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,885	08/21/2003	Paul Roland Bergquist	J6819(C)	8190
201	7590	10/14/2005	EXAMINER	
UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/645,885		BERGQUIST ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Norca L. Torres-Velazquez		1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-16 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 7-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 7/25/05 have been fully considered but they are not persuasive.

a. Applicants have amended independent claim 1 to now claim the Air permeability of the textile. Applicants argue that the claimed air permeability is critical to the ability of the material to release a foaming lather.

With regards to the Air Permeability of the textile, it is noted that the Examiner had addressed such limitation as being obvious over SUSKIND as stated in previous action. Applicant's argument with regards to the experiments conducted to demonstrate the criticality of the particular claimed range of Air Permeability is not commensurate in scope with the claims. The present claims are not claiming the argued Lather Release profile, but instead are limited to a hydroentangled nonwoven with a particular range of Air Permeability that would be met by the Examiner's rejection since Air Permeability can be manipulated by controlling the hydroentangling conditions of the material.

b. Amended claim 1 further recites that the textile is incapable of separation in multiple layers after formation without destruction of the textile. Applicants argue that the SUSKIND et al. reference joins a pre-formed web containing wood pulp to each side of a pre-formed base web and by contrast, the textile of the present invention does not sandwich a central web with a pair of pre-formed outer webs. The process of the present invention utilizes a loose random assembly of fibers not previously formed into any coherent web. These loose fibers are placed above and below a fibrous screen modifying textile substrate followed by hydroentanglement resulting in a textile so integrated that outer and inner layers cannot be separated without destruction of the textiles.

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It is the Examiner's interpretation that the hydroentanglement process applied to the web of SUSKIND et al. provides a structure similar to the one claimed herein and that is not capable of separating in multiple layers after formation without destruction of the textile. The final product of SUSKIND et al. provides a nonwoven hydroentangled textile with a central area of low basis weight surrounded on both sides by areas of higher basis weight. Applicants arguments indicating that the structure of SUSKIND et al. is different from that claimed herein is not supported by evidence showing the structure is different. It is noted that arguments cannot take the place of evidence.

This argument is not supported by evidence but, rather is mere attorney argument. Arguments of counsel cannot take the place of evidence. See *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984); *In re Payne*, 606 F. 2d 303, 315, 203 USPQ 245,256 (CCPA 1979); *In re Greenfield*, 571 F. 2d 1185, 1189, 197 USPQ 227, 230 (CCPA 1978); *In re Pearson*, 494 F. 2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974).

It is further noted that Applicant's arguments are not commensurate in scope with the claims since the claims are not product-by-process claims as implied by their arguments. Further, it is noted herein that [T]he patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The SUSKIND et al. either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are

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commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the SUSKIND et al. reference.

c. With regards to new claims 14 and 16, it is noted that the SUSKIND et al. reference further teaches that the basis weight of the base web (central area) is in the range of 0.15 to 0.8 ounce per square yard. (Refer to Col. 3, lines 3-6) Those range with the values disclosed in the examples for the wet laid webs meet the presently claimed ratio ranges from 4:1 to 2:1.

d. With regards to new claims 13 and 15 now requiring the areas of higher basis weight formed/or are a form of polypropylene, the Examiner relies on BROOKS (US 2003/0207632 A1) to show that polypropylene is equivalent to nylon.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1, 3-4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. (US 4,808,467) which is an equivalent to EP 0308320 A.

SUSKIND et al. discloses a fabric produced by hydroentangling a web with a basis weight of 0.3 ounce per square yard of continuous nylon filaments between two 0.9 oz/sq. yd. wet laid webs of pulp and polyethylene terephthalate. (Refer to Example 4, Column 7, lines 14-35). It is further noted that the SUSKIND et al. reference further teaches that the basis weight of

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the base web (central area) is in the range of 0.15 to 0.8 ounce per square yard. (Refer to Col. 3, lines 3-6) Those range with the values disclosed in the examples for the wet laid webs meet the presently claimed ratio ranges from 4:1 to 2:1. It is noted that the reference teaches using the material as absorbent materials. (Col. 1, lines 48-68).

While Example 4 of the SUSKIND et al. reference shows a Frazier Air Permeability of 148 CFM/sq.ft (Table III), it is noted that Air Permeability can be manipulated by one having ordinary skill in the art of hydroentangled fabrics as it is evidenced by the same reference when one compares the hydroentangling conditions between example 4 and 5. Example 4 uses a support woven transfer belt with a lower air permeability to the one used in Example 5. The fabric produced in Example 4 has a nonapertured appearance as a result of the tightly woven transfer belt material versus the apertured fabric of Example 5, which uses a higher permeability transfer belt.

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the permeability of the fabric and provide with a higher permeability with the motivation of producing a material with a higher degree of absorption capacity as shown by SUSKIND. (Refer to properties of materials in examples)

4. Claims 7-9, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. as applied above, and further in view of WAGNER et al. (US 5,951,991).

While SUSKIND et al. discloses the structure of the nonwoven hydroentangled textile, it fails to teach the use of a cleansing composition comprising a lathering surfactant as claimed herein.

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WAGNER et al. relates to a substantially dry, disposable, personal cleansing product. The reference teaches the use of apertured hydroentangled substrates. (Refer to Col. 7, lines 33-col. 8, lines 17) The reference teaches the use of from about 0.5% to about 40% lathering surfactant based on the weight of the substrate. (Col. 8, lines 45-49) The reference further teaches the use of a conditioning emulsion comprising from about 0.25% to about 1505 of the substrate. (Col. 14, lines 2-24)

Since both references are directed to high strength hydroentangled materials, the purpose disclosed by WAGNER et al. would have been recognized in the pertinent art of SUSKIND et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the substrate of SUSKIND et al. and provide with a cleansing composition with lathering surfactant with the motivation of producing a personal cleansing product as disclosed by WAGNER. (Col. 1, lines 15-39)

5. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. and WAGNER as applied to claim 7 above, and further in view of BERGQUIST (US 6,723,330 B2).

While WAGNER teaches a substantially dry, disposable, personal cleansing product, if fails to teach the use of effervescent ingredients that would produce foam upon contact with water.

BERGQUIST teaches an article for cleansing body surfaces that includes an effervescent cleansing composition capable of generating a foam upon contact with water. (Abstract) The reference teaches the use of sodium bicarbonate and citric acid. (Col. 2, lines 37-39)



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Since this reference is also directed to a substantially dry cleansing composition, the purpose disclosed by BERGQUIST would have been recognized in the pertinent art of WAGNER.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the cleansing composition and provide it with the effervescent composition with the motivation of generating a foam upon contact with water without the need to mechanically treat the material to produce the foam.

6. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. and WAGNER et al. as applied to claims 1 and 7 above, and further in view of BROOKS (US 2003/0207632 A1).

BROOKS is directed to disposable washcloth and teaches a basesheet that could be made from any suitable synthetic or natural material or blend thereof that is durable, non-abrasive, fluid retentive and disposable. The reference teaches the use of nonwoven hydroentangled materials and teaches that suitable polymers include polyolefins such as polyethylene and polypropylene, rayons, polyesters, nylon, among others. (Refer to [0015])

SUSKIND et al. discloses the claimed invention except that it uses nylon instead of polypropylene, BROOKS shows that polypropylene is an equivalent structure known in the art. Therefore, because these two references were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute nylon for polypropylene.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. FULLER et al. (US 6,852,654 B2) – *is directed to a hydroentangled nonwoven fabric, the outer surface of which exhibits highly entangled fibers whereas the inner layer exhibits lightly entangled fibers. (Abstract)*



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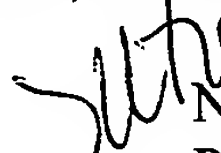
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Norca L. Torres-Velazquez  
Primary Examiner  
Art Unit 1771

October 11, 2005